

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 297.

PHILADELPHIA AND READING RAILWAY COMPANY,
PETITIONER,

vs.

MARIA DOMENICA DI DONATO.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF PENNSYLVANIA.

PETITION FOR CERTIORARI FILED APRIL 1, 1931.

CERTIORARI AND RETURN FILED MAY 12, 1931.

(37,597)

(27,597)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 297.

PHILADELPHIA AND READING RAILWAY COMPANY,
PETITIONER.

vs.

MARIA DOMENICA DI DONATO.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Docket entries.....	1	1
Præcipe for certiorari to Workmen's Compensation Board.....	3	1
Defendant's appeal and exceptions <i>ex parte</i> appellant to decision of Workmen's Compensation Board.....	4	2
Docket entries.....	7	4
Claim petition.....	9	5
Notice to defendant of claim petition.....	12	8
Assignment of claim petition to referee.....	13	9
Answer to claim petition.....	14	10
Notice of appeal from referee.....	15	11
Award of referee.....	17	12
Appeal from referee alleging error of law.....	20	14
Petition for rule to show cause why appeal should not be reinstated	22	15
Exhibits A, B, C, and D—Appeal and letters.....	24	16
Order to file appeal <i>nunc pro tunc</i>	28	18

	Original.	Print.
Notice of hearing of appeal.....	20	19
Opinion of Workmen's Compensation Board.....	31	21
Copy defendant's appeal and exceptions <i>ex parte</i> appellant to decision of Workmen's Compensation Board.....	35	24
Certiorari to Workmen's Compensation Board.....	38	26
Certificate of Harry C. Mackey, chairman.....	39	26
Opinion on appeal from decision of Workmen's Compensation Board	40	27
Certiorari to common pleas court No. 1.....	45	30
Appeal and affidavit.....	46	31
Assignments of error.....	47	32
Opinion of the supreme court of Pennsylvania.....	50	34
Petitions of appellant to stay the mandate pending applica- tion to Supreme Court of the United States.....	54	36
Order staying mandate.....	59	39
Supreme court docket entries.....	60	40
Certificate of chief justice.....	61	41
Certificates of prothonotary.....	62	41
Writ of certiorari and return.....	63	42

C. P. No. 1, December Term, 1918.

No. 2020.

Docket Entries.

2020.

MARIA DOMENICA DI DONATO

VS.

PHILADELPHIA & READING RAILWAY CO.

Geo. G. Parry.

Certiorari to Workmen's Compensation Board filed.

Jan. 9, 1919. Record returned opened and filed.

Feb. 24, 1919. Appeal dismissed and award confirmed.

Eo Die. Opinion filed.

Mar. 14, 1919. Certiorari from S. C. as of Jan. Term, 1920, No. 12 &c., brought into office.

Eo Die. Appeal bond filed.

Certified from the Record this 15th day of March, A. D. 1919.

[SEAL.]

R. M. SNYDER.

Pro Proth'y.

C. P. No. —, —, Term, 1918.

No. —.

MARIA DOMENICA DI DONATO

VS.

PHILADELPHIA & READING RAILWAY COMPANY.

To the Prothonotary:

SIR:

Issue certiorari to the Workmen's Compensation Board to bring up the record in the above entitled case.

(Signed)

GEORGE GOWEN PARRY,

GEORGE GOWEN PARRY,

Att'y for Defendant.

December 23, 1918.

Endorsement: No. 2020, C. P. No. 1, Dec. Term, 1918. Maria Domenica Di Donato vs. Philadelphia and Reading Railway Company. Praecipe for Certiorari. Filed Dec. 23, 1918. Pro Prothy, George Gowen Parry, 415 Reading Terminal, Philadelphia, Pa.

4 In the Court of Common Pleas No. 1, of Philadelphia County,
Dec. Term, 1918.

2020.

MARIA DOMENICA DI DONATO, Claimant,

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant,
Philadelphia and Reading Railway Company, Insurance Carrier,

Bureau of Workmen's Compensation, Department of Labor and
Industry. Claim Petition. No. 5619.

Philadelphia and Reading Railway Company, Appellant, appeals
from the decision of the Workmen's Compensation Board made De-
cember 13, 1918, on the claim above mentioned.

PHILADELPHIA AND READING
RAILWAY COMPANY,

By GEORGE ZIEGLER,

Secretary.

W. N. S.

COMMONWEALTH OF PENNSYLVANIA,

County of Philadelphia, ss:

George Ziegler on oath says that he is Secretary of Appellant,
and that this appeal is not taken for the purpose of delay, but be-
cause the appellant believes that injustice has been done by the de-
cision appealed from.

GEORGE ZIEGLER,

W. N. S.

Sworn to and subscribed before me this 23rd day of December,
A. D. 1918.

[SEAL.]

J. V. HARE,

Notary Public.

Commission Expires March 1, 1919.

5 In the Court of Common Pleas, No. —, of Philadelphia
County, — Term. 1918.

No. —.

In the Matter of

MARIA DOMENICA DI DONATO, Claimant,

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Bureau of Workmen's Compensation.

Claim Petition, No. 5619.

*Exceptions Ex Parte Appellant to the Decision of the Workmen's
Compensation Board.*

1. The Compensation Board erred in reaching the legal conclusion that the claimant was entitled to compensation under the Workmen's Compensation Act of 1915.

2. The Compensation Board erred in failing to reach the conclusion that claimant's decedent and defendant were engaged in interstate commerce at the time the decedent was injured.

3. The Compensation Board erred in holding that the defense of interstate commerce carries with it the burden of proof.

4. The Compensation Board erred in holding that the burden of proof was on the defendant to show that decedent was engaged in interstate commerce.

5. The Compensation Board erred in failing to hold that the burden of proof was on the claimant to show the decedent came within the provisions of the Workmen's Compensation Act.

6. The Compensation Board erred in allowing compensation to the claimant.

7. The claimant is not entitled to compensation.

8. The award of the Compensation Board is in conflict with the provisions of the Act of Congress of April 22, 1908, and supplements thereto, known as the "Federal Employers' Liability Act" and in violation of Article 1, Section 8, of the
6 Constitution of the United States.

9. The award of the Compensation Board was in violation of the 14th Amendment to the Constitution of the United States, in that it deprives this defendant of its property without due process of law.

10. The decision of the Compensation Board is not warranted by law under the evidence in the case.

(Signed)

GEORGE GOWEN PARRY.

GEORGE GOWEN PARRY.

*Attorney for Philadelphia and Reading
Railway Company, Appellant.*

Endorsement: No. 2020. C. P. No. 1, Dec. Term, 1918. Maria Domenica Di Donato vs. Philadelphia and Reading Railway Company. Defendant's Appeal and exceptions ex parte Appellant to the decision of the Workmen's Compensation Board. Filed Dec. 23, 1918. J. Pro. Prothy. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

Docket Entries.

A-973.

Proceedings Under Claim Petition #5619.

George C. Klaunder, Referee.

First Compensation District.

MARIA DOMENICIA DI DONATO

v.

PHILA. & READING Rwy. Co.

- May 13, 1918. Claim Petition filed.
Counsel for claimant: Hyman Shattuck, Esq., Philadelphia.
- May 14, 1918. Notice to defendant of claim petition.
- May 14, 1918. Assignment of claim petition to Referee.
- May 21, 1918. Defendant's answer to claim petition filed.
Counsel for defendant: George Gowen Parry, Esq., Philadelphia.
Insurer of defendant: Self insured.
- May 22, 1918. Notice of hearing with copy of answer served.
- June 3, 1918. Hearing before Referee at Philadelphia, continued to June 10, continued to June 11th.
- July 27, 1918. Referee's award filed.
- Aug. 9, 1918. Appeal by defendant from Referee's conclusions of law filed.
- Sept. 6, 1918. Petition for rule to show cause why appeal should not be re-instated.
- Sept. 28, 1918. Order of the Board re-instating appeal as filed of August 9, 1918.
- Nov. 13, 1918. Hearing before Board at Philadelphia oral argument by counsel of record, and referred to Chairman Mackey for opinion.

6

- Dec. 13, 1918. Opinion by Chairman Markey, Commissioners Scott and Leech concurring, affirming Referee's award and dismissing appeal file.
- Dec. 13, 1918. Notice of the decision of the Board with copies of same mailed to appellant and appellee.
- Dec. 26, 1918. Appeal and exceptions from decision of the Workmen's Compensation Board received by Bureau.
- Dec. 26, 1918. Certiorari to Workmen's Compensation Board as of December Term 1918, #2020 received.
- Jan. 9, 1919. Certified copy of transcript of record, being proceedings under Claim Petition #5619 in the Bureau of the Workmen's Compensation Board of Pennsylvania, delivered to Prothy C. P. of Philadelphia County.

Claim Petition for Compensation Dependents of Deceased Employee.

(Section 413.)

[Stamped:] A. M. State Workmen's Compensation Bureau, Harrisburg, Pa., 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. 1918, May 13.

(Do not fill in.)

—, 191—.

Claim Petition, No. 5619.

MARIA DOMENICA DI DONATO (Claimant)

vs.

PHILA. & READING RAILROAD Co. (Dependent).

To the Workmen's Compensation Board of Pennsylvania:

The claimant respectfully alleges the following facts:

- (1.) That Pasquale Di Donato died on March 18, 1918, as the
(Name of deceased employee.) (Date of death.)
result of an accident occurring in the course of his employment.
- (2.) The dependents are as follows:

Name	Residence.	Relation to deceased.
Maria Domenica Di Donato	126 Maple St., Conshohocken, Pa.	Widow.
Nicola Di Donato	126 " " " "	Son.
Rosa Di Donato	126 " " " "	Daughter.
Vincenzo Di Donato	126 " " " "	Son.
Amedeo Di Donato	126 " " " "	Son.

Year, month, day of birth.	Nationality.	Language spoken.
1878, August 15	Italian	Italian.
1907, January 18	Italian	Italian & Eng.
1912, April 29	Italian	Italian & Eng.
1915, January 2	Italian	Italian & Eng.
1917, January 20	Italian.	

(3.) If a claimant is a widower, widow not living with the deceased employe at the date of death, father, mother, brother, sister, step or adopted child or a child to whom the deceased employe stood in loco parentis, state how and to what extent the deceased contributed to his or her support and if the claimant is a widower, also state how and why he is incapable of self support.

Gave all to his wife.

If the claimant is a widow or widower state also residence at date of employe's death. Employe lived at 126 Maple St., Conshohocken, Pa.

(4.) There are the following surviving widow, widower or children who are not dependents. (State reason why not dependent.) All dependents.

10 (5.) By whom was the deceased employed at the time of the accident? Phila. & Reading Railroad Company.

(Give name, address, place of business and business address.)

(If the deceased employe was not directly employed by the defendant, state by whom he was employed, the work on which he was engaged, his place of work, and the relation between his direct employer and the defendant.)

(6.) Where did the accident happen? Forest Crossing, Conshohocken, Pa.

(7.) When did the accident happen? March 18, 1918 at 7:15 P. M.

(State year, month, day and hour.)

(8.) What kind of work was the deceased employe doing at the time of the accident? Watchman at crossing.

(If he was not actually at work at the time of the accident, state why he was at the place of the accident and what he was doing there.)

(9.) Give a full description of the accident and state how it caused the death of the deceased employe. Run over Forrest Street Crossing, Conshohocken, Pa.

(10.) Did the deceased employe receive medical, surgical, or hospital services? —.

(If so, give name and address of attending physician or surgeon, or of the hospital.)

(11.) What were the expenses of the last sickness and burial?
\$150.00.

Has the employer paid any part of these, if so, how much? Fu-
neral Expenses paid.

(12.) What were the weekly wages of deceased at time of acci-
dent? \$16.50 per week.

What was the business of the employer? —.

What was the occupation of the deceased? Watchman.

(1.) If, but only if, the occupation was seasonal or dependent
upon the weather, state:

(a) Total earnings of deceased during the last year. \$—.

(b) Names of employers for whom deceased worked in last year.
Philadelphia and Reading R. R.

Address: —.

Length of time worked for each: —.

Amount earned from each: \$—.

11 (13.) Was compensation paid to the deceased employe be-
tween the date of accident and his death? Died instantly.

(If so, state day, month and year when the payments began and
ended and their total amount.)

(14.) Did you or the deceased employe serve notice of his injury
upon his employer within fourteen days? —.

(If notice was not served within fourteen days after injury, state
fully the reasons for not doing so.)

(15.) What other facts are there which you believe important?
—.

(16.) State total amount of compensation claimed.
Wherefore the (claimant) asks that your Honorable Board shall
(claimants) (him)
make an award that the defendant shall pay to (her) such compen-
(him) (them)
sation as may be due (her) under the alleged facts.
(them)

Her
MARIA DOMENCIA X DI DONATO,
Mark. *Dependent.*

Address: 126 Maple Street, Conshohocken.

Dependant.

Address.

Witness so making mark:

WAINO CINOTTI,

144 W. Front Ave.,

[SEAL.] Conshohocken.

Subscribed and sworn to before me, this 11th day of May 1918 at Philadelphia.

[SEAL.]

A. TUHOLSKE,
Notary Public.

My commission expires on twelfth day of March, 1921.

(This affidavit may be sworn before a Compensation Referee or any other person authorized to administer an oath.)

NOTICE.—This petition may be signed and sworn to by any dependent for himself and all other dependents.

12 Pennsylvania Department of Labor and Industry,
 Workmen's Compensation Bureau,
 Harrisburg, Pa.

Notice to Defendant of Claim Petition.

(Section 413.)

Claim Petition, No. 5619.

MARIA DOMENICA DI DONATO, Claimant,

vs.

PHILADELPHIA & READING RAILWAY COMPANY, Defendant.

Harrisburg, Pa., May 14th, 1918.

To Philadelphia & Reading Railway Co.,
Reading Terminal, Phila., Pa.

A claim petition, a copy of which is enclosed herewith has been presented by Maria Domenica Di Donato against you to the Workmen's Compensation Board, and has been assigned to Geo. C. Klauder Compensation Referee of the 1st District for investigation and determination in accordance with the provisions of the Workmen's Compensation Act of 1915.

We hereby notify you that unless an answer shall within seven days from the date of this notice be filed with the said Referee at his office 1103 N. American Bldg., Phila., Pa., the facts alleged in the petition will be deemed to be admitted and no testimony will be required from the claimant to prove, nor heard in your behalf to deny, such facts.

WORKMEN'S COMPENSATION BUREAU,

Secretary.

tgm/E. M. R.

NOTE.—The Defendant should file his answer in triplicate with the Referee.

13 Pennsylvania Department of Labor and Industry,
Workmen's Compensation Bureau,
Harrisburg, Pa.

Assignment of Claim Petition to Referee.

(Section 413.)

Claim Petition, No. 5619.

MARIA DOMENICA DI DONATO, Claimant, Address 126 Maple St.,
Conshohocken, Pa.,

vs.

PHILA. & READING RAILWAY CO., Defendant, Address Reading
Terminal, Phila., Pa.

Harrisburg, Pa., May 14th, 1918.

To Geo. C. Klauder, Referee, 1st District:

Enclosed find copy of above Claim Petition No. 5619 which is assigned to you for investigation and determination in accordance with the provisions of the Workmen's Compensation Act of 1915.

WORKMEN'S COMPENSATION BUREAU,

_____,
Secretary.

1915.

(Filed thru Evans, Forster & Wernick, Attorneys at Law, 908
Bailey B'd'g, 1218 Chestnut St., Phila.)

tgm/E. M. R.

Copy of claim petition served on defendant, forwarded this date.

Pennsylvania Department of Labor and Industry,

Workmen's Compensation Bureau,

Harrisburg, Pa.

Defendant's Answer to Claim Petition.

(Section 414.)

Claim Petition, No. 5619.

MARIA DOMENICA DI DONATO, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

May 20, 1918.

In answer to the claim petition No. 5619.

1. The defendant denies the following facts alleged in the claim petition,

To wit, the averments of paragraphs 1, 2, 5, 6, 7, 8, 9, 11 and 12.

2. The defendant states the following additional facts not alleged in the claim petition:

3. The defendant denies that he is liable to pay compensation under the facts alleged in the claim petition, for the following reasons, Because while in the course of his employment on March 18, 1918, decedent was engaged with the defendant in interstate commerce.

PHILADELPHIA AND READING
RAILWAY COMPANY,

By F. W. FLECK,

Chief Clerk, Defendant.

Address: Claim Dep't, Reading Terminal, Phila., Pa.

Subscribed and sworn to before me, this 20th day of May, 1918.

J. V. HARE,

[SEAL.]

Notary Public.

My commission expires on the 1st day of March, 1919.

(This affidavit may be sworn to before a Compensation Referee or any other person authorized to administer an oath.)

tgm/E. M. R.

15 Pennsylvania Department of Labor and Industry,

Workmen's Compensation Board,

Notice of Appeal from Referee.

(Sec. 419-420-421.)

Harrisburg, Pa., October 2, 1918.

Claim Petition, No. 5619.

Compensation Agreement No. —.

Appeal No. A-973.

MARIA DI DONATO, Claimant,

vs.

PHILA. & READING R. R. Co., Defendant.

To Hymen Shane, Esq., 1218 Chestnut St., Philadelphia, Pa.:

The Workmen's Compensation Board notifies you that the defendant has taken an appeal from the award of compensation by Referee Klauder in the above case, copy of which is enclosed herewith. (See note at bottom of page.)

You should advise promptly whether you desire the appeal to be heard

- (a) Without argument on your part;
- (b) On brief to be submitted;
- (c) On oral argument in person or by counsel.

If request to submit argument or brief is not made by either party the appeal will be considered by the Board at its first meeting after receipt of transcript of testimony from the Referee.

WORKMEN'S COMPENSATION BOARD,

_____,
Secretary.

NOTE.—When appeal is filed in duplicate, copy of same will be furnished with this notice. Otherwise, if copy is desired it should be obtained from the appellant.

G.

16 The foregoing record of the proceedings of the above case is hereby approved and certified as correct.

GEORGE C. KLAUDER,

Referee, First District.

Phila., Penna., July 27th, 1918.

Pennsylvania Department of Labor and Industry,

Workmen's Compensation Bureau,

Harrisburg, Pa.

Referee's Award or Disallowance of Compensation.

Claim Petition, No. 5619.

MARIA DOMENICA DI DONATO, Claimant,

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Hearing held at No. 1115 North American Building, Philadelphia, Penna., on Tuesday, June 11th, 1918, at 10 A. M., at which there were present:

Mrs. Maria Domenica Di Donato, 126 Maple Street, Conshohocken, Penna., claimant; Hymen Shane, Esq., appearing for Roland C. Evans, Esq., 1218 Chestnut Street, Philadelphia, Penna., counsel for claimant; Frank Ruggiero, Conshohocken, Penna., interpreter, Joseph Stanislawski, 115 Maple Street, Conshohocken, Penna., witness for claimant; and

George Gowen Parry, Esq., counsel for defendant; Herbert M. Snook, 4528 North Nineteenth Street, Philadelphia, Penna.; J. L. Long, 48 Fayette Street, Conshohocken, Penna., and George M. Wilde, 121 East Main Street, Lansdale, Penna., witnesses for defendant.

Findings of Fact.

At the hearing it was agreed that the claim petition should be amended so as to name the defendant as the Philadelphia and Reading Railway Company instead of the Philadelphia and Reading Railroad Company.

On March 18th, 1918, neither Pasquale Di Donato nor the defendant had filed with the Workmen's Compensation Bureau, nor served upon the other, notice of rejection of Article III of the Workmen's Compensation Act of 1915, in accordance with the provisions of said Act.

On that date and for some time previous thereto, Pasquale Di Donato was in the employ of the defendant, whose business was that of steam railway operator and whose place of business was at Philadelphia, Penna., as a crossing watchman, at the Forrest Street crossing in Conshohocken, Penna., and in said employment on that date his wages were payable on an hourly basis, and during so much of the six months previous thereto as he worked for the defendant his average weekly wage was Sixteen dollars and fifty cents (\$16.50) and was payable semi-monthly.

On that date at about 7.15 P. M., Pasquale Di Donato, while acting in the course of his employment with the defendant, while flagging a train at the Forest Street crossing in Conshohocken, Penna., was struck by a train of the defendant company and instantly killed.

It was contended by the defendant that at the time of the occurrence of the injury, Pasquale Di Donato was engaged in interstate commerce. The defendant, however, failed to prove by the weight of the evidence that such was the fact. The defendant showed that many interstate shipments and trains passed over the rails of the defendant company at this Forrest Street crossing, but they did not offer any evidence whatever to show that at the time of the occurrence of the injury Pasquale Di Donato was engaged in performing some duty incident to the passage of an interstate train; and since the burden is on the defendant to show by the weight of the evidence that the injured employee was at the time of the occurrence of the injury engaged in interstate commerce, we find, as a fact, that at the time of the occurrence of the injury Pasquale Di Donato was not engaged in work incident to interstate commerce.

The defendant had due notice of the injury and of the death of Pasquale Di Donato, and that his death had occurred as aforesaid.

At the time of the occurrence of the injury, the defendant was a common carrier, by rail, engaged in both intrastate and interstate commerce.

The expense of the burial of the decedent exceeded One Hundred Dollars, none of which has been paid by the defendant, and he left to survive him the following dependents:

19 His widow—Maria Domenica Di Donato, who resided with him at the date of his death, and the following children:

Nicola Di Donato, born January 18, 1907.

Rosa Di Donato, born April 29th, 1912.

Vincenzo Di Donato, born January 3rd, 1915.

Amedio Di Donato, born January 20th, 1917.

Conclusions of Law.

On March 18, 1918, both Pasquale Di Donato and the defendant were bound by the terms of Article III of the Workmen's Compensation Act of 1915.

The injury sustained by Pasquale Di Donato while acting in the course of his employment with the defendant on that date was such an injury by accident as is contemplated by Article III, Section 301, of said Act; and since these injuries resulted in the death of Pasquale Di Donato, and the defendant had due notice of the occurrence of the injury and of the death of Pasquale Di Donato, and that his death had so resulted; and since he left to survive him a dependent widow and children, his dependents are entitled to compensation.

Award.

Under Article III, Section 307, compensation is awarded as follows;

To Maria Domenica Di Donato, One Hundred Dollars (\$100.00) on account of the expense of burial of decedent; and Sixty per cent (60%) of decedent's weekly wage of sixteen Dollars and Fifty Cents (\$16.50) or Nine Dollars and Ninety Cents (\$9.90) per week, from March 18, 1918, to January 17th, 1923, inclusive;

To Maria Domenica Di Donato, fifty-five per cent (55%) of decedent's weekly wage of sixteen dollars and fifty cents (\$16.50) or Nine Dollars and eight cents (\$9.08) per week from January 18th, 1923 to December 17th, 1923, inclusive;

To the Guardian of Rosa, Vincenzo and Amedeo Di Donato, Thirty-five (35%) of decedent's weekly wage of Sixteen Dollars and Fifty Cents (\$16.50) or five dollars and seventy-eight (\$5.78) per week from December 18th, 1923, to April 28th, 1928, inclusive.

To the Guardian of Vincenzo and Amedeo Di Donato, Twenty-five per cent (25%) of decedent's weekly wage of Sixteen Dollars and Fifty Cents (\$16.50) or Four Dollars and Thirteen Cents (\$4.13) per week, from April 29th, 1928, to January 2nd, 1931.

To the guardian of Amedeo Di Donato, Fifteen Per cent (15%) of decedent's weekly wage of Sixteen Dollars and Fifty Cents (\$16.50) or Two Dollars and Forty-eight Cents (\$2.48) per week, from January 3rd, 1931, to January 19th, 1933, inclusive.

(Signed)

GEO. C. KLAUDER,

Referee, First District.

Philada., Penna, July 27th, 1918.

Appeal from Referee Alleging Error of Law.

(Section 419.)

Pennsylvania Department of Labor and Industry,

Workmen's Compensation Bureau, Harrisburg, Pa.

Claim Petition, No. —.

MARIA DOMENICA DI DONATO, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

August 9, 1918.

Received Oct. 1, 1918. Workmen's Compensation Board. Referred to —.

To the Workmen's Compensation Board, Harrisburg, Pa.:

Defendant hereby appeals from the award of George C. Klauder, Referee of the First Compensation District on the ground
21 that upon the facts found by the said referee his award is not in accordance with the provisions of the Workmen's Compensation Act of 1915 in the following particulars:

1. The Referee erred in failing to reach the legal conclusion that the decedent and defendant were engaged in interstate commerce at the time the decedent was injured.

2. The Referee erred in reaching the legal conclusion that the claimant is entitled to compensation under the Workmen's Compensation Act of 1915.

PHILADELPHIA AND READING RAILWAY
COMPANY.

By GEORGE GOWEN PARRY,

Its Attorney.

NOTICE.—This appeal must be filed within 10 days after service of the notice of the Referee's award or disallowance of compensation.

99
22

Workmen's Compensation Bureau.

Claim Petition, No. 5619.

MARIA DOMENCIA DI DONATO

vs.

PHILADELPHIA AND READING RAILWAY COMPANY.

*Petition for Rule to Show Cause Why Appeal Should not be
Reinstated.*

Your petitioner respectfully represents that he is the attorney for Philadelphia and Reading Railway Company, the defendant above named, and that on August 3, 1918, he received by the United States mail a copy of the decision of the Referee of the First District awarding compensation to the claimant in this case.

That on August 9, 1918, being desirous of appealing from the said decision he prepared an appeal alleging error of law, executed the same and mailed it to Lee Solomon, Esq., Secretary, Workmen's Compensation Board, Masonic Temple Building, Harrisburg, Pa. A copy of the said appeal is attached hereto marked Exhibit A, and a copy of the letter of transmittal is also attached, marked Exhibit B.

On August 20, 1918, your petitioner wrote the said Secretary inquiring whether the appeal had been received, and on August 22, 1918, received a reply stating that it had not. Copies of these letters are attached, marked respectively Exhibits C and D.

Your petitioner further represents that it is the uniform practice to forward such appeals by mail; that in this case there was ample time for delivery of the said appeal at Harrisburg within the time provided by the Act of Assembly, and that the defendant will be deprived of its lawful rights if it is not allowed by its Counsel to argue the said appeal before your Honorable Board.

He therefore prays the rule be allowed to show cause why the said appeal should not be reinstated.

And he will ever pray, etc.

GEORGE GOWEN PARRY.

Att'y for P. & R. Ry. Co., Def't.

September 6, 1918.

23 STATE OF PENNSYLVANIA.

County of Philadelphia, ss:

George Gowen Parry being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are true.

GEORGE GOWEN PARRY.

Sworn to and subscribed before me this 6th day of Sept., A. D. 1918.

[SEAL.]

LEON J. OBERMAYER,

Notary Public.

Com. expires 1. 7. 21.

24

EXHIBIT A.

Pennsylvania Department of Labor and Industry,

Workmen's Compensation Bureau,

Harrisburg, Pa.

Appeal from Referee Alleging Error of Law.

(Section 419.)

Claim Petition, No. 5619.

MARIA DOMENICA DI DONATO, Claimant,

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

August 9, 1918.

To the Workmen's Compensation Board, Harrisburg, Pa.:

Defendant hereby appeals from the award of George C. Klauber, Referee of the First Compensation District, on the ground that upon the facts found by the said referee his award is not in accordance with the provisions of the Workmen's Compensation Act of 1915 in the following particulars:

1. The Referee erred in failing to reach the legal conclusion that the decedent and defendant were engaged in interstate commerce at the time the decedent was injured.

2. The Referee erred in reaching the legal conclusion that the claimant is entitled to compensation under the Workmen's Compensation Act of 1915.

PHILADELPHIA AND READING
RAILWAY COMPANY,
By GEORGE GOWEN PARRY,
Name of party taking appeal,
Its Attorney.

Address —.

Notice.—This appeal must be filed within 10 days after service of the notice of the Referee's award or disallowance of compensation.

25 EXHIBIT B. August 9, 1918.

Lee Solomon, Esq.,
Secretary, Workmen's Compensation Board,
Harrisburg, Pa.

DEAR SIR:

I hand you herewith appeal from the Referee's Conclusions of Law in the case of Di Donato vs. Philadelphia and Reading Railway Company, Claim Petition No. 5619.

The appellant desires to be heard by its Counsel in oral argument at Philadelphia in behalf of the appeal.

Yours very truly,

GEORGE GOWEN PARRY,
Att'y for P. & R. Ry. Co.

Encs.

26 EXHIBIT C. August 20, 1918.

Lee Solomon, Esq.,
Secretary Workmen's Compensation Board,
Masonic Temple Building,
Harrisburg, Pa.

DEAR SIR:

I am in receipt of a letter under date of August 17th from Rowland C. Evans, Esq., of this Bar, who represents Maria Di Donato, inquiring when payment will be made of the award made by Referee Klauder on August 2, 1918, in the case of Di Donato vs. Philadelphia and Reading Railway Company, Claim Petition No. 5619.

Appeals in this case were forwarded you August 9, 1918. Please advise me if they have not been received.

Yours very truly,

GEORGE GOWEN PARRY,
Att'y for P. & R. Ry. Co.

27

EXHIBIT D.

Commonwealth of Pennsylvania,
Department of Labor and Industry,
Bureau of Workmen's Compensation,
Harrisburg.

August 21, 1918.

George Gowen Parry, Esq.,
Philadelphia, Pa.
600 Franklin Building.

MY DEAR SIR:

Answering your letter of August 20th, we have not received an appeal from the decision of Referee Klauder in the case of Maria Di Donato vs. Philadelphia and Reading Railway Company.

CP-5619.

Yours very truly,

LEE SOLOMON,
Secretary.

J. C. D. E.

Endorsement: 5619. Workmen's Compensation Bureau First District. Maria Domenica Di Donato vs. Philadelphia and Reading Railway Company. Petition for Rule to show Cause why appeal should not be re-instated. George Gowen Parry, Attorney-at-Law 600 Franklin Building, Philadelphia, Pa. Parry.

28

Department of Labor and Industry,
Workmen's Compensation Board,
Harrisburg, Penna.

Claim Petition No. 5619.

MARIA DOMENICA DI DONATO, Claimant,

v.

PHILADELPHIA & READING RAILWAY COMPANY, Defendant.

Petition for Leave to File Appeal Nunc pro Tunc.

Order.

The defendant has presented a petition for leave to file its appeal as of August 6, 1918, setting forth that this appeal was duly executed and mailed to the proper bureau at Harrisburg within the statutory

period and that the same had either been lost in the Department or misrouted in the mails. The claimant through her counsel Roland S. Evans, Esq., having been notified of the allegation of the petition agreed that the same should be granted.

It is accordingly ordered that the appeal of the defendant shall be received by the Bureau and filed as of August 9, 1918.

By the Board,

HARRY A. MACKEY,
Chairman.

Attest:

LEE SOLOMON,
Secretary.

29 Pennsylvania Department of Labor and Industry.

Workmen's Compensation Board.

Notice of Hearing of Appeal.

Harrisburg, Pa., Nov. 4, 1918.

Claim Petition No. 5619.

Compensation Agreement No. —.

Appeal No. A-973.

MARIA DOMESCIA DI DONATO, Claimant.

vs.

PHILA. & READING RY. CO., Defendant.

To Hyman Shaw, Esq.,
1218 Chestnut St.,
Philadelphia, Pa.:

Notice is hereby given that the Workmen's Compensation Board will hear argument on appeal from decision of Referee in above case at 3:00 P. M., Wednesday, November 13th, at its offices 11th Floor, North American Bldg., Philadelphia, Pa.

Please acknowledge receipt of this notice.

WORKMEN'S COMPENSATION BOARD.

Secretary.

Original copy of this notice served by mail as per date and address herein.

LEE SOLOMON,
Secretary.

Per D,

Pennsylvania Department of Labor and Industry.

Workmen's Compensation Board.

Notice of Hearing of Appeal.

Harrisburg, Pa., Nov. 4, 1918.

Claim Petition No. 5619.

Compensation Agreement No. —.

Appeal No. A-973.

MARIA DOMENICA DI DONATO, Claimant,

vs.

PHILA. & READING RY. CO., Defendant.

To George Gowen Perry, Esq.,
Reading Terminal Bldg.,
Philadelphia, Pa.

Notice is hereby given that the Workmen's Compensation Board will hear argument on appeal from decision of Referee in above case at 3:00 P. M., Wednesday, November 13th, at its offices 11th Floor, North American Bldg., Philadelphia, Pa.

Please acknowledge receipt of this notice.

WORKMEN'S COMPENSATION BOARD.

Secretary.

Original copy of this notice served by mail as per date and address herein.

LEE SOLOMON,

Secretary.

Per ———.

31

Department of Labor and Industry,

Workmen's Compensation Board,

Harrisburg, Pa.

Claim Petition No. 5619.

MARIA DOMENICA DI DONATO, Claimant, 126 Maple Street, Conshohocken, Pa.,

v.

PHILADELPHIA & READING RY. CO., Defendant, Philadelphia, Pa.

Appeal from Award of Compensation by Referee Klander, District No. 1.

Appellant's counsel: George Gowen Parry, Esq., Reading Terminal Building, Philadelphia, Pa.

Appellee's counsel: Roland C. Evans, Esq., 1219 Chestnut St., Philadelphia, Pa.

*Opinion.*MR. KEY, *Chairman*:

The claimant in the above entitled case is the widow of Pasquale Di Donato who was killed in the course of his employment for the defendant. The Philadelphia & Reading Railway Co., under the following circumstances: On March 18, 1918, the deceased was employed as a watchman upon a public crossing where Forest Street, a public highway, in Conshohocken, Pa., crosses the tracks of the defendant. An agreement was placed upon the record that the defendant is engaged in both intrastate and interstate traffic. The defendant contends that under these facts the deceased at the time of his death was engaged in interstate commerce and that the Workmen's Compensation Board has no jurisdiction to award compensation. Of course, if the deceased were engaged in interstate commerce at the time of his death, the defendant would be relieved of the obligation to pay compensation. *New York Central R. R. vs. Witzfeld*, 244 U. S. 174.

The record discloses that in the case at bar we have a watchman whose duties were to guard a public crossing of a railroad company's tracks over which at different intervals passed trains containing interstate commerce and at other times trains with shipments solely confined to points within the State. The defendant is striving to establish the proposition that, under such circumstances, this watchman is a part of the essential machinery of the operation of its interstate commerce, and therefore at all times, no matter what be the character of the trains that pass over the tracks, is engaged in interstate commerce. It is true that we have held in *Petrollini vs. Phila.*

& Reading Railway Co., 3 Department Reports 2862, that "the flagging of an interstate train at a crossing is as essential to the security expedition and efficiency of interstate commerce as is the repairing of a bridge; nor can we distinguish between the employment of a crossing tender while flagging an interstate train from that of a flagman who is a member of a crew of an interstate train who is sent out to perform a similar service," yet in *McAndrews vs. Dela-*

32 *ware, Lackawanna & Western Railroad Co.*, 3 Department Reports, 2863, we held that "the watchman's services in signaling intrastate trains, while essential to keeping such trains in motion and so to keeping the tracks clear for the passage of interstate trains, is not more, but rather less essential to such purposes than are the services of the train crew upon an intrastate train, which have been repeatedly held to be intrastate and not interstate commerce. Therefore, the mere fact that the flagman's services are valuable in keeping the track clear for interstate commerce cannot make his employment interstate in character. It may, however, be contended that the security of interstate commerce, both passenger and freight, requires that the track be guarded against outside intrusion by those using the highway at times when the track is in use for the transportation of interstate passengers and freight, and that therefore, the services of the watchman are essential to the security of such commerce in the same manner, though perhaps not to the same extent, as are the services of section hands, who keep the track in repair. There is, however, a marked difference between the laying out of permanent tracks and the performance of duties, from time to time, which only conduce to the security of interstate commerce, and as these services are from time to time required."

If these observations are well founded and the distinction that we attempted to draw in these two cases is logical, then the Referee must be affirmed. The defendant set up interstate commerce as a defense and upon that suggestion challenged the jurisdiction of the Workmen's Compensation Board, and if it is essential to establish that defense by showing the character of the train which the flagman was signalling and which caused his death, then the defense has failed, for the Referee has rightly concluded that there was no evidence before him indicating whether or not the train that caused the death, which was the same train which the deceased was flagging, was an interstate or intrastate vehicle, but if the contention of the defendant is well founded in law that a watchman at a public crossing of a railroad company over which at times passes interstate as well as intrastate freight is always an employee engaged in interstate commerce, then the Referee was wrong and his legal conclusion from these facts is erroneous and should be reversed and compensation ought to be disallowed.

We have just decided in *Smith vs. Philadelphia & Reading Railway Co.*, in an opinion handed down at the same time with the one now under discussion, that when a watchman is killed while in the act of flagging an interstate train he is engaged in interstate commerce and a state compensation law is not applicable.

We hold, however, that the defense of interstate commerce when

set up by the defendant becomes a matter of proof by competent and reliable testimony and that the burden of the same is thrown upon the defendant. This proposition we assume is beyond successful controversy. See *Osborn vs. Gray*, 241 U. S. 16; *Hench vs. Pennsylvania Railroad Co.*, 246 Pa. 1. In this case the defendant alleges that there was nothing for it to meet, inasmuch as it was content to rest its case upon the legal proposition just above outlined. We believe the best considered decisions indicate that the courts unite upon the thought, that the character of the employee's undertaking in this respect must be determined by the work he had actually been engaged in at the very time of the accident. See *Hench vs. Pennsylvania Railroad Co.* (supra); *Railroad Company vs. Behrens*, 246 U. S. 473; *Chicago, etc., vs. Harrington*, 241 U. S. 177; *Mayers vs. Railroad Co.*, 256 Pa. 474; *Minneapolis, etc., vs. Winters*, 242 U. S. 353. We have consistently adhered to this line of decisions. See also *McLaughlin vs. Lehigh Valley Railroad Co.*, 4 Department Reports 224.

We hold, therefore, that this watchman while in the course of his employment met his death while flagging a train whose character has been undisclosed by the testimony. We believe that the mere fact that he was so engaged does not render him an employee engaged in an interstate activity. We rule that the burden of
 34 proving its defense was upon the defendant and sustain the Referee in his finding that this burden has not been met.

We hold that there is a clear line of distinction between the case of *Amy Smith vs. Phila. & Reading Railway Co.*, just decided and the present one. We disallowed compensation in the former case on the ground that the deceased was actually flagging an interstate commerce train at the time of his death. In the latter, under the proofs, we have an employee performing his duties for an employer and suffering death in the course of that employment with the facts undisclosed by the testimony as to whether he was engaged in an interstate or intrastate activity at that time. The claimant, therefore, established a *prima facie* case entitling her to compensation which has not been overcome by any proof whatsoever.

The award of the Referee is accordingly affirmed and the appeal dismissed.

HARRY A. MACKEY,
Chairman.

Concurred in by Commissioners Scott and Leech
 December 13, 1918.

35 In the Court of Common Pleas No. 1, of Philadelphia County,
Dec. Term, 1918.

No. 2020.

Received Dec. 26, 1918. Workmen's Compensation Board. Referred to —.

Bureau of Workmen's Compensation, Department of Labor and Industry.

Claim Petition No. 5619.

MARIA DOMENICA DI DONATO, Claimant,

v.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant; Philadelphia and Reading Railway Company, Insurance Carrier.

Philadelphia and Reading Railway Company, Appellant appeals from the decision of the Workmen's Compensation Board made December 13, 1918, on the claim above mentioned.

PHILADELPHIA AND READING
RAILWAY COMPANY,

By GEO. ZIEGLER,
Secretary.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

George Ziegler on oath says that he is Secretary of Appellant, and that this appeal is not taken for the purpose of delay, but because the appellant believes that injustice has been done by the decision appealed from.

GEO. ZIEGLER.

Sworn to and subscribed before me this 23rd day of December A. D. 1918.

[SEAL.]

J. V. HARE,
Notary Public.

Commission expires March 1, 1919.

36 In the Court of Common Pleas No. —, of Philadelphia County, — Term, 1918.

No. —.

Bureau of Workmen's Compensation.

Claim Petition No. 5619.

In the Matter of MARIA DOMENICA DI DONATO, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Exceptions Ex Parte Appellant to the Decision of the Workmen's Compensation Board.

1. The Compensation Board erred in reaching the legal conclusion that the claimant was entitled to compensation under the Workmen's Compensation Act of 1915.

2. The Compensation Board erred in failing to reach the conclusion that claimant's decedent and defendant were engaged in interstate commerce at the time the decedent was injured.

37 3. The Compensation Board erred in holding that the defense of interstate commerce carries with it the burden of proof.

4. The Compensation Board erred in holding that the burden of proof was on the defendant to show that decedent was engaged in interstate commerce.

5. The Compensation Board erred in failing to hold that the burden of proof was on the claimant to show the decedent came within the provisions of the Workmen's Compensation Act.

6. The Compensation Board erred in allowing compensation to the claimant.

7. The claimant is not entitled to compensation.

8. The award of the Compensation Board is in conflict with the provisions of the Act of Congress of April 22, 1908, and supplements thereto, known as the "Federal Employers' Liability Act" and in violation of Article I, Section 8, of the Constitution of the United States.

9. The award of the Compensation Board was in violation of the 14th Amendment to the Constitution of the United States, in that it deprives this defendant of its property without due process of law.

10. The decision of the Compensation Board is not warranted by law under the evidence in the case.

GEORGE GOWEN PARRY,
*Attorney for Philadelphia and Reading
Railway Company, Appellant.*

Certified from the record this 24th day of December A. D. 1918.

[SEAL.]

R. M. SNYDER,
Pro Prothy.

Endorsement: No. 2020—copy—C. P. No. 1 Dec. Term, 1918. Maria Domenica Di Donato vs. Philadelphia and Reading Railway Company. Defendant's Appeal and Exceptions Ex Parte Appellant to the Decision of the Workmen's Compensation Board. Filed Dec. 23, 1918. Rains. \$1.50 paid. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Phila.

38

Certiorari Compensation Board.

Received Dec. 26, 1918. Workmen's Compensation Board. Referred to —.

CITY AND COUNTY OF PHILADELPHIA, ss:

The Commonwealth of Pennsylvania to the Workmen's Compensation Board, Greeting:

We, being willing, for certain causes, to be certified of a certain action, between Maria Domenica Di Donato, Claimant, and Philadelphia and Reading Railway Company, Defendant, and Insurance Carrier, before you depending, do command you, within ten days after service hereof to certify to our Court of Common Pleas, No. — at Philadelphia, the entire Record as before you they now remain, together with this writ; that we may further cause to be done thereupon, that which of right and according to the Law and Constitution of this Commonwealth ought to be done.

Witness the Honorable F. Amedee Bregy, President Judge of our said Court at Philadelphia, the 23rd day of Dec., in the year of our Lord, one thousand nine hundred eighteen (1918).

[SEAL.]

HENRY F. WALTON,
Prothonotary,

By SOLOMON RAINS.

Endorsement: 2020, Dec. Term, 1918. Court of Common Pleas, No. 1, County of Philadelphia. Maria Domenica Di Donato vs. Philad'a & Reading Rwy. Co. Certiorari to Workmen's Compensation Board. G. G. Parry.

39

I hereby certify that the foregoing is a true and complete transcript of the record in the case of Maria Domenica Di Donato v. Phila. & Reading Rwy. Co., being proceedings under

Claim Petition #5619 in the Bureau of the Workmen's Compensation Board of Pennsylvania.

[SEAL.]

HARRY A. MACKEY,

Chairman.

Attest:

LEE SOLOMON,

Secretary to the Board.

Endorsement: 2020, Dec. T., 1918, Court of Common Pleas, No. 1, of Philadelphia County. Maria Domenicia Di Donato v. Phila. & Reading Rwy. Company, Appellant. Certified Copy of Transcript of Record, being proceedings under claim petition, #5619 in the Bureau of the Workmen's Compensation Board of Pennsylvania. Filed Jan. 9, 1919. Hanna, Pro Prothy.

40

C. P. No. 1, December Term, 1918.

No. 2020.

MARIA DOMENCIA DI DONATO

VS.

PHILADELPHIA & READING RAILWAY CO.

Appeal from the Decision of the Workmen's Compensation Board.

Pasquale Di Donato, plaintiff's husband, was employed by defendant, a common carrier engaged in interstate and intra-state commerce, as a flagman at the crossing of a public highway over defendant's railroad. On March 18, 1918, while flagging a train in the course of his employment, Di Donato was struck by a train and killed. Claim was made by plaintiff to the Workmen's Compensation Board for compensation from defendant, under the Workmen's Compensation Act of 1915. There was evidence that many interstate shipments and trains passed over defendant's road at this crossing, but no evidence that the train Di Donato was flagging, at the time he was killed, was employed in interstate commerce. In the absence of evidence that Di Donato, at the time of the occurrence, was engaged in performing some duty incident to the passage of an interstate train, the Board found as a fact that he was not so engaged at the time of the injury, and concluded that plaintiff was entitled to compensation and an award was accordingly made.

The defendant has appealed from the action of the Board, and in the exceptions filed, alleges error in this finding and conclusion.

The contention of the defendant is, that there was sufficient evidence of the nature of the employment in which the employee was engaged at the time of his injury, and that it required a conclusion that it was in interstate commerce. The facts in evidence on which this contention is based are the engagement of defendant in both interstate and intrastate commerce, and the performance by

plaintiff's decedent, at the time of his injury and while in defendant's employ, of the duties of flagman or crossing watchman, and the conclusion that "a watchman flagging trains on a crossing of an interstate and intrastate railroad is engaged in interstate commerce," and therefore the provisions of the Employer's Liability Act of Congress (c. 149, 35 Stat. 65; c. 143, 36 Stat. 291) applied.

41 While the field within which the Act of Congress is paramount and exclusive, it is limited, by its terms, to injuries suffered by employees of interstate carriers while such employees are engaged in interstate commerce; and in all injuries suffered by such employees when not so engaged, the liability of the carrier is subject to state control.

Railroad Company vs. Winfield, 244 U. S. 170 and 147.

The determination whether Federal or State jurisdiction shall prevail in any given case depends upon the prior determination whether the employment in which an injury occurred was interstate or intrastate commerce. By reason of the fact that carriers and their employees are engaged in both kinds of commerce, and with employees constantly changing, in the necessities of their employment, from one to the other, it is often difficult to identify with certainty in which of the two kinds of commerce an employment was being rendered when an injury occurred. The determination of each case must depend, therefore, largely, upon its own particular facts, as to whether the employee is engaged in interstate business or in an act which is so directly and immediately connected with such business as substantially to form a part or necessary incident thereof.

N. Y. C. & H. R. R. Co. vs. Carr, 238 U. S. 260.

Pedersen vs. Del. Lack. & W. R. R., 229 U. S. 146, seems to be an exception to the prevailing rule that the decision in each case is confined to its own facts, and in our opinion should not be extended to cover a general class of cases of similar, but not identical facts. In that case it was decided that an employee engaged in the repair of a bridge of an interstate railroad was an interstate employment, for the reason that the bridge was an instrumentality indispensable to interstate commerce, and its repair, to keep it in a serviceable state for use, was so clearly related to interstate commerce as to form a part of it. The nature of the employment is here deduced

42 from the character and use of the instrumentality on which it was engaged, and not from the particular act of the employee at the time of an injury, as in most cases, and the effect of the decision is to permanently fix as employment in interstate commerce, the work of entire classes of employees engaged in the repair of such material instrumentalities as bridges, tracks, signals, systems, &c. This was followed by N. Y. C. R. R. vs. Winfield, 244 U. S. 147, where the employee was engaged in the repair of the track. The Pedersen case is relied upon by the defendant in this case for the proposition that the watchman here, by nature of his

employment, and without reference to the particular act in which he was engaged, was employed in interstate commerce at the time of his injury.

The facts in the two cases are, however, not parallel. In the Pedersen case the determination of the employment was in the form of a question "Was that work being done independently of the interstate commerce in which the defendant was engaged, or was it so closely connected therewith as to be part of it?" Applied to the facts of that case, it was decided that this test required the conclusion that the work was so closely connected with interstate commerce as to form a part of it. Using this test, however, as a rule for determining the nature of an employment, the facts in this case are so materially different from those in the Pedersen case as to lead to a different conclusion. In the Pedersen case the close connection between the repair work and interstate commerce from which the nature of the employment was deduced, was not determined, as in the usual case, by consideration of the particular act in which the employee was engaged, but by reference to the relation of the work to an instrumentality of transportation which was indispensable to interstate commerce. Because the employment contributed to commerce through the work on the instrumentality, it derived its nature from the character and use of the instrumentality; but by reason of its physical character, the use of the instrumentality could not be differentiated or apportioned as between interstate and intrastate commerce passing over it, and it necessarily follows that no distinction could be made in the work in the repair, as contributing to the two kinds of commerce. But the employment of a watchman in the present case did not contribute to commerce through an intervening instrumentality, and therefore the primary factor in the determination of the nature of the employment in the Pedersen case does not exist. It is only by treating the watchman as an instrumentality, such as a semaphore-signal, that the decision in the Pedersen case can be made applicable to the determination of the nature of this employment; and the argument of the defendant goes the length of so classifying Di Donato's employment. In effect, it is contended that, like the mechanical signal, his services were so inextricably commingled in interstate and intrastate commerce, as to make it impossible to identify any particular act as contributed separately to the furtherance of either kind of commerce, and therefore that his employment, as a whole, is so closely connected with interstate commerce as to form a part of it. Consideration, however, of the duties of a watchman, and the occasion and manner of his employment, does not support this or warrant this conclusion. He is not a mechanical instrumentality, whose services in commerce cannot be differentiated, but acts separately and with intelligence in the performance of each duty incident to his employment. To aid the safe passage of commerce, he is required to give particular and divided service to the protection and control of each separate train in its progress over the crossing, and accordingly as a train may be engaged in interstate or intrastate commerce, his service in so doing is a specific and individual contribution to the particu-

lar commerce in which such train is engaged. This is true in fact and there seems to be no reason why it should not be allowed its natural result, of impressing upon his employment the nature of the separate act which he is performing at any particular time. It is difficult to distinguish the service of a watchman in expediting the safe passage of an intrastate train, from the service of the employees in the operation of the train. For the time and at the place, 44 he is co-operating with them in a common service, the furtherance of intrastate commerce, and his joint action with them in the accomplishment of the same purpose should stamp his employment at that particular time with the same nature as that in which the trainmen are engaged.

We are, therefore, of the opinion that there was no error in the failure of the Workmen's Compensation Board to conclude from the facts in the case that defendant and plaintiff's decedent were engaged in interstate commerce at the time the injury occurred, as assigned in defendant's exceptions, and accordingly the appeal is dismissed and the award of the Workmen's Compensation Board is affirmed.

SHOEMAKER,
Judge.

Endorsement: No. 2020, D. Term, 1918. C. P. No. 1. Di Donato vs. Phila. & Reading Ry. Co. Appeal from Decision of Workmen's Compensation Board. Transcript of Official Stenographic Record. Filed 2-24-19. Burns.

45 THE SUPREME COURT OF PENNSYLVANIA,
Eastern District,
City and County of Philadelphia, ss:

The Commonwealth of Pennsylvania to the Judges of the Court of Common Pleas No. 1 for the County of Philadelphia, Greeting:

We being willing for certain causes, to be certified of the matter of the Appeal of Philadelphia and Reading Railway Company from the judgment of your said Court at No. 2020 of December Term, A. D. 1918, wherein Maria Domenica Di Donato was Plaintiff and the said appellant was Defendant, before you, or some of you, depending, do command you, that the record and proceedings aforesaid, with all things touching the same, before the Justices of our Supreme Court of Pennsylvania, at a Supreme Court to be holden at Philadelphia, in and for the Eastern District, the first Monday of January next (1920), so full and entire as in your Court before you they remain, you certify and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the Laws of the said State ought.

Witness, the Honorable J. Hay Brown, Doctor of Laws, Chief Justice of our said Supreme Court at Philadelphia, the thirteenth

day of March, in the year of our Lord one thousand nine hundred and nin-teen.

[SEAL.]

WILLIAM A. STONE,

Prothonotary.

To the Honorable the Justices of the Supreme Court of the Commonwealth of Pennsylvania, sitting in and for the Eastern District:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

WM. H. SHOEMAKER. [SEAL.]

[SEAL.]

[Endorsed:] No 2020, December Term, 1918. C. P. No. 1, Phila. No. 12, January Term, 1920. Supreme Court. Maria Domenica Di Donato v. Philadelphia and Reading Railway Company, Appellant. Certiorari to the Court of Common Pleas No. 1, for the County of Philadelphia. Returnable the first Monday of January, 1920. Rule on the Appellee, to appear and plead on the Return-day of the Writ. William A. Stone, Prothonotary. 3-14-18. Filed in Supreme Court Mar. 18, 1919, Philadelphia. Brought into office, W. F. Lafferty, *Pro Proth'y.* George Gowen Parry.

46 In the Supreme Court of Pennsylvania for the Eastern District, Court of Common Pleas No. 1, of the County of Philadelphia, December Term, 1918.

No. 2020.

MARIA DOMENICA DI DONATO, Plaintiff,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Enter appeal on behalf of the above defendant from the judgment of the Court of Common Pleas No. 1 of the County of Philadelphia.

GEORGE GOWEN PARRY,

Attorney for Appellant.

WILLIAM A. STONE,

Prothonotary.

SUPREME COURT, EASTERN DISTRICT,

County of Philadelphia, ss:

George Ziegler, Secretary of above defendant, being duly sworn saith that said Appeal is not taken for the purpose of delay, but because Appellant believes it has suffered injustice by the judgment, from which it appeals.

GEO. ZIEGLER,

Sworn to and subscribed, this 12th day of Mar., A. D. 1919.

J. V. HARE,

[SEAL.]

Notary Public.

W. N. S.

Commission expires March 1, 1923.

[Endorsed:] No. 12. January Term, 1920. Supreme Court of Pennsylvania, Eastern District. Maria Domenica Di Donato v. Philadelphia & Reading Railway Co. Appeal and Affidavit. Filed in Supreme Court, Mar. 13, 1919, Philadelphia. ———, Attorney for Appellant.

47 In the Supreme Court of Pennsylvania, Eastern District,
January Term, 1920.

No. 12.

MARIA DOMENICA DI DONATO

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Appellant.

Philadelphia and Reading Railway Company, the appellant above named, makes and files the following Assignments of Error in the above entitled case.

Assignments of Error.

1. The Court below erred in dismissing defendant's first exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

"1. The Compensation Board erred in reaching the legal conclusion that the claimant was entitled to compensation under the Workmen's Compensation Act of 1915."

2. The Court below erred in dismissing defendant's second exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

"2. The Compensation Board erred in failing to reach the conclusion that claimant's decedent and defendant were engaged in interstate commerce at the time the decedent was injured."

48 3. The Court below erred in dismissing defendant's third exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

"3. The Compensation Board erred in holding that the defense of interstate commerce carries with it the burden of proof."

4. The Court below erred in dismissing defendant's fourth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

"4. The Compensation Board erred in holding that the burden of proof was on the defendant to show that decedent was engaged in interstate commerce."

5. The Court below erred in dismissing defendant's fifth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

"5. The Compensation Board erred in failing to hold that the burden of proof was on the claimant to show the decedent came within the provisions of the Workmen's Compensation Act."

6. The Court below erred in dismissing defendant's eighth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

"8. The award of the Compensation Board is in conflict with the provisions of the Act of Congress of April 22, 1908, and supplements thereto, known as the 'Federal Employers' Liability Act,' and in violation of Article 1, Section 8, of the Constitution of the United States."

7. The Court below erred in dismissing defendant's ninth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

"9. The award of the Compensation Board was in violation of the 14th Amendment to the Constitution of the United States, in that it deprives this defendant of its property without due process of law."

GEORGE GOWEN PARRY.

GEORGE GOWEN PARRY.

Attorney for Appellant.

Endorsement: 12. Jan. Term, 1920. In the Supreme Court of Pa., Eastern District. Maria Domenica Di Donato vs. Philadelphia and Reading Railway Company, Appellant. Assignments of Error. Filed in Supreme Court, Dec. 24, 1919, Philadelphia. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

50 In the Supreme Court of Pennsylvania, Eastern District,
January Term, 1920.

No. 12.

MARIA DOMENICA DI DONATO

v.

PHILADELPHIA & READING RAILWAY COMPANY.

Appeal by Defendant from the Judgment of the Court of Common
Pleas No. 1, of Philadelphia County.

Filed February 23, 1920.

Opinion.

WALLING, J.:

This case is under the State Workmen's Compensation Act. On March 18, 1918, Pasquale Di Donato, while in defendant's employ as a watchman at a public road crossing in this state, was killed by a train on tracks used for both intra and interstate commerce, and it does not appear to which branch of the service that train, or the one he was flagging, belonged. The referee made an award in favor of his widow; from which defendant appealed to the compensation board and later to the court below; and, the board and the court having affirmed the award, brought this appeal.

In our opinion the case was properly decided. However, if the deceased lost his life while employed in interstate commerce, the case is within the Federal Employers' Liability Act of 1908, and there can be no recovery here (*Railroad Company v. Winfield*, 244 U. S. 170, and 147), and the flagging of an interstate train is in such commerce: *Flynn v. N. Y. S. & W. R. Co.*, (N. J.) 101 Atl. 1034. But we cannot adopt defendant's contention that a watchman at such crossing is engaged in interstate commerce when flagging an intrastate train. The nature of the employment is determined by the work in hand at the immediate time of the accident (*Erie Railroad Company v. Welsh*, 242 U. S. 303; *Minneapolis & St. Louis R. R. Co. v. Winters*, 242 U. S. 353, 357; *Myers v. Union R. R. Co.*, 256 Pa. 474), and, as such work often shifts rapidly from

54 one class of employment to the other, each case must be decided in the light of its particular facts (*N. Y. Central R. R. Co. v. Carr*, 238 U. S. 260), and is governed by the purpose of the operation: *Louisville & Nashville R. R. Co. v. Parker*, 242 U. S. 13. If the work in hand is interstate, or so closely related thereto as to be practically a part of it, then it falls within the Act of Congress (*N. Y. C. & H. R. Co. v. Carr*, *supra*), as it also does where the work has a direct application to both intra and interstate-commerce (*Erie R. R. Co. v. Winfield*, *supra*); for example, keeping a track used for both in repair (*Pedersen v. Del., Lack. & West. R. R.*, 244 U. S. 146; *Zikos v. Oregon R. & Navigation Co.*, 179 Fed.

893) and free from obstructions (So. Ry. Co. v. Puckett, 244 U. S. 571; Cent. R. R. of N. J. v. Colasurdo, 192 Fed. 901). But a crossing flagman is in the nature of a traffic officer who protects the public and pilots each train over the crossing; and how can it be said that he is engaged in through traffic when so conducting a local train? He is assisting that train and his act is not essentially different from that of a conductor or brakeman thereon, for each is working for the safety of the train. Yet an employee upon an intra-state train is not engaged in interstate commerce; Ill. Cent. R. R. v. Behrens, 233 U. S. 473. However, it is urged that flagging a local train promotes its safe passage and thus tends to keep the track open and clear for through traffic; but certainly no more so than the work of the crew of the intra-state train on the same track, and if this incidental matter of keeping the track open renders the one an interstate employment, why not both? The repair of a track or bridge over which interstate commerce passes is a direct immediate benefit thereto, entirely unlike any remote or collateral benefit it might possibly derive from flagging an intra-state train. And the true rule apparently is that to come within the range of interstate commerce the work must bear directly and not remotely thereon; otherwise practically all local work on trunk railways would be in interstate commerce, for one can scarcely conceive of any act so done that might not have some remote bearing upon such commerce. So, while this question does not seem to have been directly decided by the United States Supreme Court and the rulings thereon by other courts are not in harmony, we conclude that a crossing watchman while flagging an intra-state train is not employed in interstate commerce, although trains engaged in such commerce use the same tracks.

Plaintiff made out a prima facie case by showing, inter alia, the employment, work and accident in this state, and the burden is on defendant, who interposed the Federal statute, to prove facts necessary to bring the case within its terms. While a state court can take judicial notice of an act of congress it cannot take such notice of facts necessary to bring a particular case within its provisions. The Federal Employers' Liability Act, applicable to interstate commerce only, bears no analogy to the Federal Bankruptcy Act, which is of general application. There is no presumption that the train a watchman at a local crossing was flagging when killed was an interstate train. It is not a matter governed by presumption but by proof (Hench v. Penna. R. R. Co., 246 Pa. 1, 6; and see Hancock v. Phila. & R. Ry. Co., 264 Pa. 220), the burden of which rests upon the party alleging it; here the defendant: Polk v. Philadelphia & R. Ry. Co., 600 Pa. 600 (filed this term). This familiar rule of evidence is especially applicable here, otherwise plaintiff must prove a negative, to wit, that her husband was not killed while flagging an interstate train, and must do so when the evidence as to whether it was such or not is peculiarly within the knowledge of defendant. As the latter offered no evidence upon the question that defense failed. It was its duty to individuate the particular act in which the deceased was engaged and show by competent evidence the train in question and that

it was an interstate train, or at least that his act had some reasonably direct connection with such train. In *Orborne v. Gray*, 241 U. S. 16, the Court, speaking through Mr. Justice Hughes, say (p. 21), "It is apparent that there was no evidence requiring the conclusion that the deceased was engaged in interstate commerce at the time of his injury, and we are asked to supply the deficiency by taking judicial notice that the cars came from without the State. This contention we are unable to sustain. The make-up of trains and the movement of cars are not matters which we may assume to know without evidence * * * The defendants knew the actual movement of the cars, and failing to inform the court upon this point cannot complain that they have been deprived of a Federal right."

The judgment is affirmed.

54 In the Supreme Court of Pennsylvania, Eastern District,
January Term, 1920.

No. 12.

PHILADELPHIA AND READING RAILWAY COMPANY, Appellant.

vs.

MARIA DOMENICA DI DONATO.

To the Honorable J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, and to the Other Justices of the said Honorable Court and to the Honorable Supreme Court of Pennsylvania:

The petition of Philadelphia and Reading Railway Company, Appellant herein, respectfully represents:

1. That on February 22, 1920, an opinion of this Court was filed affirming the judgment of the Court of Common Pleas No. 1 of Philadelphia County in favor of Maria Domenica Di Donato and against Philadelphia and Reading Railway Company, Appellant, in a cause of action in which the jurisdiction of the Workmen's Compensation tribunals was challenged on the ground that the claimant's decedent was engaged in interstate commerce.

2. That the questions presented by the assignments of error in this case, particularly those relating to the exclusive application of the Federal Employers' Liability Act to cases where an employee of an interstate railroad is engaged in work incident to interstate commerce, are questions of broad general interest to railroad companies throughout the country; and your petitioner is advised by Counsel that it is desirable that the Supreme Court of the United States be asked to pass finally upon these questions in order that the management of the said companies be advised as to the proper disposition of similar cases arising in the future.

55 3. That the Act of Congress and the rules of the Supreme Court, in such cases *made and* provided, fix the time within

which petitions for writs of certiorari be filed in the Supreme Court of the United States at three months, but your petitioner is prepared to perfect the record in this case and to file its petition for a writ of certiorari in the Supreme Court of the United States on or before the 5th day of April, 1920.

4. That your petitioner is advised that in order that the proceedings may remain in their present status pending the disposition of such a petition for a writ of certiorari, a special order of this Court is required to stay the issuing of the mandate.

Wherefore your petitioner prays that this Court enter an order directing the prothonotary of your Honorable Court to hold the mandate in this cause pending the filing of the aforesaid petition for a writ of certiorari in the Supreme Court of the United States until the 5th day of April, 1920, and that if said petition shall be filed in the Supreme Court of the United States on or before that day that the mandate be further held until the Supreme Court of the United States shall act upon the said petition for the writ of certiorari aforesaid.

And your petitioner will ever pray, etc.

PHILADELPHIA AND READING RAILWAY
COMPANY.

By GEORGE GOWEN PARRY,
GEORGE GOWEN PARRY.

Counsel.

56

Order.

And now, to wit this — day of March, A. D. 1920, upon consideration of the foregoing petition and upon motion of George Gowen Parry, Esq., Counsel for Philadelphia and Reading Railway Company, Appellant, it is ordered that the mandate in the above entitled case shall not issue but shall be stayed until April 5, 1920; and that if on or before that day there shall be filed with the Prothonotary of this Court an affidavit of Counsel for Philadelphia and Reading Railway Company showing that a petition for a writ of certiorari has been filed by the said appellant in the Supreme Court of the United States that the mandate shall be held for a further period thereafter, and shall not issue before final disposition shall be made by the Supreme Court of the United States of the petition for the writ of certiorari aforesaid.

Chief Justice.

Endorsement: #12, page 239. In the Supreme Court of Pa., January Term, 1920. Philadelphia and Reading Railway Company, Appellant, vs. Maria Domenica Di Donato. Petition to stay the mandate pending application to the Supreme Court of the United States for Writ of Certiorari. Mar. 8, 1920. Petition denied. Per Curiam. Filed in Supreme Court Mar. 2, 1920. Philadelphia, George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

57 In the Supreme Court of Pennsylvania, Eastern District, January Term, 1920.

No. 12.

PHILADELPHIA AND READING RAILWAY COMPANY, Appellant,

VS.

MARIA DOMENICA DI DONATO.

To the Honorable J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, and to the other Justices of the said Honorable Court and to the Honorable Supreme Court of Pennsylvania:

The petition of Philadelphia and Reading Railway Company Apellant herein respectfully represents:

1. That on Friday, February 22, 1920, an opinion of this Court was filed affirming the judgment of the Court of Common Pleas No. 1 of Philadelphia County in favor of Maria Domenica Di Donato and against Philadelphia and Reading Railway Company, Appellant in a cause of action in which the jurisdiction of the Workmen's Compensation tribunals was challenged on the ground that the claimant's decedent was engaged in interstate commerce.

2. That the questions presented by the assignments of error in this cause, particularly those relating to the exclusive application of the federal employers' Liability Act to cases where an employee of an interstate railroad is engaged in work incident to interstate commerce, are questions of broad general interest to railroad companies throughout the country; and your petitioner is advised by counsel that it is desirable that the Supreme Court of the United States be asked to pass finally upon these questions in order that the management of the said companies be advised as to the proper disposition of similar cases arising in the future.

58 3. That the Act of Congress and the rules of the Supreme Court in such cases made and provided, fix the time within which petitions for writs of certiorari may be filed in the Supreme Court of the United States at three months. It is further provided by Rule 37 of the Supreme Court of the United States that the party making application for writ of certiorari shall, as a part thereof, furnish the court with a certified copy of the whole record, that 30 printed copies of the petition for the writ of certiorari and brief in support thereof shall be filed and notice of the date of submission of the petition, together with a copy of petition and brief in support of the same, shall be served on the counsel for the respondent at least two weeks before such date.

4. Your petitioner is prepared to perfect the record in this case, and to file its petition for writ of certiorari in the Supreme Court of the United States on or before the 5th day of April, 1920.

5. That you petitioner is advised that in order that the proceedings may remain in their present status pending the disposition of such a petition for writ of certiorari, a special order of this Court is required to stay the issuing of the mandate.

Wherefore your petitioner prays that this Court enter an order directing the prothonotary of your Honorable Court to hold the mandate in this cause pending the filing of the aforesaid petition for a writ of certiorari in the Supreme Court of the United States until the 5th day of April, 1920, and that if said petition shall be filed in the Supreme Court of the United States on or before that day the mandate be further held until the Supreme Court of the United States shall act upon the said petition for the writ of certiorari aforesaid.

And your petitioner will ever pray, etc.

PHILADELPHIA AND READING
RAILWAY COMPANY.

By GEORGE GOWEN PARRY,
GEORGE GOWEN PARRY,

Counsel.

59

Order.

And now, to wit this 9th day of March, A. D., 1920, upon consideration of the foregoing petition and upon motion of George Gowen Parry, Esq., Counsel for Philadelphia and Reading Railway Company, appellant, it is ordered that the mandate in the above entitled case shall not issue but shall be stayed until April 5, 1920, and that if on or before that day there shall be filed with the Prothonotary of this Court an affidavit of Counsel for Philadelphia and Reading Railway Company showing that a petition for writ of certiorari has been filed by the said appellant in the Supreme Court of the United States that the mandate shall be held for a further period thereafter, and shall not issue before final disposition shall be made by the Supreme Court of the United States of the petition for writ of certiorari aforesaid.

J. HAY BROWN,

Chief Justice.

Endorsement: #12, page 248. In the Supreme Court of Pa., January Term, 1920. Philadelphia and Reading Railway Company, Appellant, vs. Maria Domenica De Donato. Petition to stay the mandate pending application to the Supreme Court of the United States for Writ of Certiorari. March 9, 1920. Petition granted Order inside. Filed in Supreme Court, Mar. 9, 1920, Philadelphia. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

January Term, 1920.

12.

MARIA DOMENICA DI DONATO, Plaintiff,

v.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Appeal of Defendant.

No. 2020, December Term, 1918, from the Judgment.

12.

George Gowen Parry.

Appeal from Court of Common Pleas No. 1, of the County of Philadelphia.

Filed March 13, 1919.

Ex die, Certiorari exit.

Retble. first Monday January 1920.

March 18, 1919, Record returned & filed.

December 24, 1919, Assignments of Error filed.

January 14, 1920, Argued.

February 23, 1920, The judgment is affirmed. Opinion by Walling, J.

March 2, 1920, Petition of appellant to stay the mandate pending application to the Supreme Court of the United States for writ of certiorari, filed.

Mar. 8, 1920, Petition denied: Per Curiam.

March 9, 1920, Petition to stay mandate pending application to Supreme Court of United States for Writ of Certiorari filed.

And now, to wit, this 9th day of March, A. D. 1920, upon consideration of the foregoing petition and upon motion of George Gowen Parry, Esq., Counsel for Philadelphia and Reading Rwy. Company, Appellant, it is ordered that the Mandate in the above entitled case shall not issue but shall be stayed until April 5, 1920, and that if on or before that day there shall be filed with the Prothonotary of this Court an affidavit of Counsel for Philadelphia and Reading Railway Company showing that a petition for a writ of Certiorari has been filed by the said appellant in the Supreme Court of the United States that the mandate shall be held for a further period thereafter and shall not issue before final disposition shall be made by the Supreme Court of the United States of the petition for the writ of certiorari aforesaid.

J. HAY BROWN,
Chief Justice.

61 I, J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, do hereby certify, that Rudolph M. Schick was, at the time of signing the annexed attestation, and now is, Prothonotary pro tem. of the said Supreme Court of Pennsylvania, in and for the Eastern District, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 18th day of March, one thousand nine hundred and twenty.

J. HAY BROWN.

I, Rudolph M. Schick Prothonotary pro tem. of the Supreme Court of Pennsylvania, in and for the Eastern District, do certify, that the Honorable J. Hay Brown by whom the foregoing certificate was made and given, was at the time of making and giving the same, and is now, Chief Justice of the Supreme Court of Pennsylvania; to whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said Supreme Court of Pennsylvania, in and for the the Eastern District, at Philadelphia, this 18th day of March, one thousand nine hundred and twenty.

[Seal of the Supreme Court of Pennsylvania, 1776.]

RUDOLPH M. SCHICK,
Prothonotary pro Tem.

62 STATE OF PENNSYLVANIA,
Eastern District;

I, Rudolph M. Schick, Prothonotary pro tem. of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the Record in the above entitled cause, so full and entire as appears of Record in said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Philadelphia, this 18th day of March, A. D. 1920.

[Seal of the Supreme Court of Pennsylvania, 1776.]

RUDOLPH M. SCHICK,
Prothonotary pro Tem.

In the Supreme Court of the United States, October Term, 1919.

No. 842.

PHILADELPHIA & READING RAILWAY COMPANY, Petitioner,

vs.

MARIA DOMENICA DI DONATO, Respondent.

Stipulation.

The Writ of Certiorari in the above entitled case having been granted to the above entitled petitioner to review the judgment and decision of the Supreme Court of the State of Pennsylvania in the above case, in which Philadelphia & Reading Railway Company was Appellant and Maria Domenica Di Donato was Appellee:

Now it is therefore stipulated and agreed between counsel for the above named petitioner and counsel for the above named respondent that the Transcript of Record of the said Supreme Court of Pennsylvania in said cause now on file in the Supreme Court of the United States be taken as a return to the said writ and that the Prothonotary of the Supreme Court of Pennsylvania forward a certified copy of this stipulation to the Clerk of the Supreme Court of the United States forthwith, as his return to the said Writ of Certiorari.

Done the 10th day of May, A. D. 1920.

GEORGE GOWEN PARRY,

Counsel for Above Petitioner.

ROWLAND C. EVANS,

Counsel for Above Respondent.

Endorsement: #842. U. S. Supreme Ct., Oct. T. 1919.—Philadelphia & Reading Railway Company, Petitioner, vs. Maria Domenica Di Donato, Respondent.—Stipulation for Return of Writ of Certiorari.—Filed in Supreme Court May 10, 1920 Philadelphia.—George Gowen Parry Attorney at Law 415 Reading Terminal Philadelphia.

STATE OF PENNSYLVANIA,

Eastern District:

Supreme Court of Pennsylvania, May 12, 1920.

In obedience to the writ of certiorari hereto attached and returned herewith, I hereby certify that the foregoing contains a true copy of the stipulation of counsel in the case therein stated, as appears from the original now of file in this office.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

RUDOLPH N. SCHICK,
Prothonotary Pro Tem.

UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Pennsylvania, Greeting:

Being informed that there is now pending before you a suit in which Philadelphia & Reading Railway Company is appellant, and Maria Domenica Di Donato is appellee, which suit was removed into the said Supreme Court by virtue of an appeal from Court of Common Pleas No. 1 of the County of Philadelphia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 27,597. Supreme Court of the United States, No. 842, October Term, 1919. Philadelphia & Reading Railway Company vs. Maria Domenica Di Donato. Writ of Certiorari. Filed in Supreme Court, May 10, 1920, Philadelphia.

[Endorsed:] 842/27,597. Maria Domenica Di Donato vs. Philadelphia and Reading Railway Company. Writ of Certiorari and Return.

[Endorsed:] File No. 27,597. Supreme Court U. S., October Term, 1919. Term No. 842. Philadelphia & Reading Ry. Co., Petitioner, vs. Maria Domenica Di Donato. Writ of certiorari and return. Filed May 13, 1920.